

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

KEEN NICARDO MOWATT,

Petitioner,

- against -

WARDEN CRAIG APKER,

Respondent.

**REPORT AND
RECOMMENDATION**

06 Civ. 2053 (JSR) (RLE)

To the HONORABLE JED S. RAKOFF, U.S.D.J.:

I. INTRODUCTION

Pro se petitioner Keen Nicardo Mowatt (“Mowatt”), a federal prisoner at Federal Correctional Institution Otisville, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 which was received by the *Pro Se* Office in this District on February 22, 2006. Mowatt was convicted of manufacturing 100 or more marijuana plants, and was sentenced to a term of eighteen months in prison. Respondent’s Memorandum of Law in Opposition to the Petition for Writ of Habeas Corpus, at 1.

In his petition, Mowatt challenges the Bureau of Prison’s (“BOP”) February 2005 Rule, codified as 28 §§ C.F.R. 570.20-.21, which limits the placement of prisoners in community corrections centers (“CCC”) to six months or the last ten percent of the prisoner’s sentence. Petition under 28 U.S.C. § 2241, at 1-3. On July 10, 2006, the Second Circuit joined the Third and the Eighth Circuits in striking down the February 2005 Rule. Levine v. Apker, 455 F.3d 71, (2d Cir. 2006). In response to the ruling in Levine, the Government informed the Court that Mowatt would be reviewed for CCC placement “without reference to the February 2005 Rule,” and that “a revised CCC placement decision for petitioner will be issued as soon as practicable.”

Letter from A.U.S.A. Kristin Vassallo, dated 07/26/06. On October 4, 2006, the Court received notice from the Government that the Mowatt was reexamined for placement “in accordance with Levine and BOP Program Statement 7310.04, and has been given a revised . . . placement date.”

Letter from A.U.S.A. Kristin Vassallo, dated 10/03/06. For the reasons set forth below, I recommend that the petition be **DISMISSED**.

II. DISCUSSION

Mowatt’s challenge was to the BOP’s February 2005 Rule, which was struck down by the Second Circuit. In response, the BOP returned to the original policy with regard to CCC placement, and gave Mowatt new consideration as to his own CCC placement. Thus, now that Mowatt has been given a new CCC designation decision under the original policy, his petition is moot.

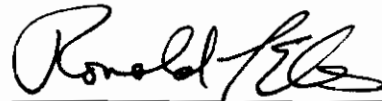
III. CONCLUSION

For the foregoing reasons, I recommend that Mowatt’s petition for a writ of habeas corpus be **DISMISSED**. Pursuant to Rule 72, Federal Rules of Civil Procedure, the parties shall have ten (10) days after being served with a copy of the recommended disposition to file written objections to this Report and Recommendation. Such objections shall be filed with the Clerk of the Court and served on all adversaries, with extra copies delivered to the chambers of the Honorable Jed S. Rakoff, 500 Pearl Street, Room 1340, and to the chambers of the undersigned, Room 1970. Failure to file timely objections shall constitute a waiver of those objections both in the District Court and on later appeal to the United States Court of Appeals. *See Thomas v. Arn*, 474 U.S. 140, 150 (1985); *Small v. Secretary of Health and Human Services*, 892 F.2d 15, 16 (2d Cir. 1989) (*per curiam*); 28 U.S.C. § 636(b)(1) (West Supp. 1995); Fed. R. Civ. P. 72,

6(a), 6(c).

DATED: October 18, 2006
New York, New York

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Ronald L. Ellis", written over a horizontal line.

The Honorable Ronald L. Ellis
United States Magistrate Judge

Copies of this Report and Recommendation were sent to:

Petitioner, *pro se*

Keen Nicardo Mowatt
#12068-041
FCI Otisville Satellite Camp
P.O. Box 1000
Otisville, New York 10963

Counsel for Respondent

Kristin L. Vassallo
Assistant United States Attorney
U.S. Department of Justice
United States Attorney
Southern District of New York
86 Chambers Street, 3rd Floor
New York, New York 10007